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Attorney for Plaintiff

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
San Jose Division**

Gerry Malolot, individually and on  
behalf of all others similarly situated;

Plaintiff,

-against-

Cypress Professional Services, Inc.  
d.b.a. Cypress Collection Services  
and John Does 1-25.

Defendant(s).

Case No.:

**CLASS ACTION COMPLAINT** for  
violations of the Fair Debt Collection  
Practices Act, 15 U.S.C. § 1692 *et seq*

Plaintiff Gerry Malolot (hereinafter, "Plaintiff"), a California resident, brings this Class Action Complaint by and through his attorneys, against Defendant Cypress Professional Services, Inc. d.b.a. Cypress Collection Services (hereinafter "Defendant" or "Cypress"), individually and on behalf of a class of all others similarly situated, pursuant to Rule 23 of the Federal Rules of Civil Procedure, based upon information and belief of Plaintiff's counsel, except for allegations

1 specifically pertaining to Plaintiff, which are based upon Plaintiff's personal  
2 knowledge.

### 3 4 **INTRODUCTION/PRELIMINARY STATEMENT**

5 1. Congress enacted the FDCPA in 1977 in response to the "abundant  
6 evidence of the use of abusive, deceptive, and unfair debt collection practices by  
7 many debt collectors." 15 U.S.C. §1692(a). At that time, Congress was  
8 concerned that "abusive debt collection practices contribute to the number of  
9 personal bankruptcies, to material instability, to the loss of jobs, and to invasions  
10 of individual privacy." *Id.* Congress concluded that "existing laws...[we]re  
11 inadequate to protect consumers," and that "the effective collection of debts"  
12 does not require "misrepresentation or other abusive debt collection practices."  
13 15 U.S.C. §§ 1692(b) & (c).

14 2. Congress explained that the purpose of the Act was not only to  
15 eliminate abusive debt collection practices, but also to "insure that those debt  
16 collectors who refrain from using abusive debt collection practices are not  
17 competitively disadvantaged." *Id.* § 1692(e). After determining that the existing  
18 consumer protection laws were inadequate~ *id.* § 1692(b), Congress gave  
19 consumers a private cause of action against debt collectors who fail to comply  
20 with the Act. *Id.* § 1692k.

**JURISDICTION AND VENUE**

3. The Court has jurisdiction over this class action pursuant to 28 U.S.C. § 1331, as well as 15 U.S.C. § 1692 et. seq. The Court also has pendent jurisdiction over the State law claims in this action pursuant to 28 U.S.C. § 1367(a).

4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2) as this is where the Plaintiff resides as well as where a substantial part of the events or omissions giving rise to the claim occurred.

**NATURE OF THE ACTION**

5. Plaintiff brings this class action on behalf of a class of California consumers under § 1692 et seq. of Title 15 of the United States Code, commonly referred to as the Fair Debt Collections Practices Act ("FDCPA"), and

6. Plaintiff is seeking damages and declaratory and injunctive relief.

**PARTIES**

7. Plaintiff is a resident of the State of California, County of Monterey, residing at 143 Christensen Ave, Salinas, CA 93906.

8. Defendant Cypress is a "debt collector" as the phrase is defined in 15 U.S.C. § 1692(a)(6) and used in the FDCPA with an address at 4600 North Star Way, Modesto, CA 95356, with an address for service c/o its registered agent, Nicholas James Wells, 4301 North Star Way, Suite B, Modesto, CA 95356.



1           14. The identities of all class members are readily ascertainable from the  
2 records of Defendants and those companies and entities on whose behalf they  
3 attempt to collect and/or have purchased debts.  
4

5           15. Excluded from the Plaintiff Classes are the Defendants and all officers,  
6 members, partners, managers, directors and employees of the Defendants and  
7 their respective immediate families, and legal counsel for all parties to this  
8 action, and all members of their immediate families.  
9

10           16. There are questions of law and fact common to the Plaintiff Classes,  
11 which common issues predominate over any issues involving only individual  
12 class members. The principal issue is whether the Defendants' written  
13 communications to consumers, in the forms attached as Exhibits A, violate 15  
14 U.S.C. §§ 1692e, and 1692f.  
15

16           17. The Plaintiffs' claims are typical of the class members, as all are based  
17 upon the same facts and legal theories. The Plaintiffs will fairly and adequately  
18 protect the interests of the Plaintiff Classes defined in this complaint. The  
19 Plaintiffs have retained counsel with experience in handling consumer lawsuits,  
20 complex legal issues, and class actions, and neither the Plaintiffs nor his  
21 attorneys have any interests, which might cause them not to vigorously pursue  
22 this action.  
23  
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1           18. This action has been brought, and may properly be maintained, as a  
2 class action pursuant to the provisions of Rule 23 of the Federal Rules of Civil  
3 Procedure because there is a well-defined community interest in the litigation:  
4

5           a. **Numerosity:** The Plaintiffs are informed and believe, and on that  
6 basis allege, that the Plaintiff Classes defined above are so  
7 numerous that joinder of all members would be impractical.  
8

9           b. **Common Questions Predominate:** Common questions of law and  
10 fact exist as to all members of the Plaintiff Classes and those  
11 questions predominate over any questions or issues involving  
12 only individual class members. The principal issue is whether the  
13 Defendants' written communications to consumers, in the forms  
14 attached as Exhibit A violate 15 U.S.C. § 1692e and §1692f.  
15

16           c. **Typicality:** The Plaintiff's claims are typical of the claims of the  
17 class members. The Plaintiffs and all members of the Plaintiff  
18 Classes have claims arising out of the Defendants' common  
19 uniform course of conduct complained of herein.  
20

21           d. **Adequacy:** The Plaintiffs will fairly and adequately protect the  
22 interests of the class members insofar as Plaintiffs have no interests  
23 that are adverse to the absent class members. The Plaintiffs are  
24 committed to vigorously litigating this matter. Plaintiffs have also  
25 retained counsel experienced in handling consumer lawsuits,  
26  
27  
28

1 complex legal issues, and class actions. Neither the Plaintiffs nor  
2 his counsel have any interests which might cause them not to  
3 vigorously pursue the instant class action lawsuit.  
4

- 5 e. **Superiority:** A class action is superior to the other available means  
6 for the fair and efficient adjudication of this controversy because  
7 individual joinder of all members would be impracticable. Class  
8 action treatment will permit a large number of similarly situated  
9 persons to prosecute their common claims in a single forum  
10 efficiently and without unnecessary duplication of effort and  
11 expense that individual actions would engender.  
12  
13

14 19. Certification of a class under Rule 23(b)(3) of the Federal Rules of  
15 Civil Procedure is also appropriate in that the questions of law and fact common  
16 to members of the Plaintiff Classes predominate over any questions affecting an  
17 individual member, and a class action is superior to other available methods for  
18 the fair and efficient adjudication of the controversy.  
19  
20

21 20. Depending on the outcome of further investigation and discovery,  
22 Plaintiffs may, at the time of class certification motion, seek to certify a class(es)  
23 only as to particular issues pursuant to Fed. R. Civ. P. 23(c)(4).  
24  
25

26 **FACTUAL ALLEGATIONS**  
27  
28

1           21. Plaintiff repeats, reiterates and incorporates the allegations contained  
2 in paragraphs numbered above herein with the same force and effect as if the  
3 same were set forth at length herein.  
4

5           22. Some time prior to March 14, 2019, an obligation was allegedly  
6 incurred to Salinas Valley Emergency.  
7

8           23. The Salinas Valley Emergency obligation arose out of a transaction  
9 involving a debt incurred by Plaintiff in which money, property, insurance or  
10 services, which are the subject of the transaction, are primarily for personal,  
11 family or household purposes, specifically medical services.  
12

13           24. The alleged Salinas Valley Emergency obligation is a "debt" as  
14 defined by 15 U.S.C. § 1692a(5).  
15

16           25. Salinas Valley Emergency is a "creditor" as defined by 15 U.S.C. §  
17 1692a(4).  
18

19           26. Salinas Valley Emergency contracted the Defendant to collect the  
20 alleged debt.  
21

22           27. Defendant collects and attempts to collect debts incurred or alleged to  
23 have been incurred for personal, family or household purposes on behalf of  
24 creditors using the United States Postal Services, telephone and internet.  
25

26  
27                           Violation I – March 14, 2019 Collection Letter  
28



1           28. On or about March 14, 2019, Defendant sent the Plaintiff a collection  
2 letter (the “Letter”) regarding the alleged debt owed to Salinas Valley  
3 Emergency. **See Collection Letter – Attached hereto as Exhibit A.**

4  
5           29. The letter states a balance of \$160.29.

6           30. The balance is explained as follows:

7  
8               Principal due: \$139.28

9               Interest: \$21.01

10          31. The letter fails to mention anywhere that that this amount will increase  
11 due to interest, costs or fees.

12  
13          32. Defendant was aware that during the collection of this debt the balance  
14 would increase due to future interest, costs and fees.

15  
16          33. Defendant’s omission that the balance may increase is a deceptive  
17 collection tactic because the consumer lacks information to make a proper  
18 decision, i.e., if the consumer would have known that the balance may increase,  
19 they may have paid the debt or accepted a prior settlement.  
20  
21

22          34. Furthermore, the Plaintiff was unaware that if he paid the amount  
23 stated on the letter, the balance would have continued to increase during this  
24 time period and additional money would be owed.  
25  
26  
27  
28



1 b. By deceptively omitting an intended action that would occur in the  
2 future such as charging the consumer interest, costs and fees in  
3 violation of §1692e(5); and  
4

5 c. By making a false and misleading representation in violation of  
6 §1692e(10).  
7

8 41. By reason thereof, Defendant is liable to Plaintiff for judgment that  
9 Defendant's conduct violated Section 1692e et seq. of the FDCPA, actual  
10 damages, statutory damages, costs and attorneys' fees.  
11

12  
13  
14 **COUNT II**  
15 **VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES**  
16 **ACT 15 U.S.C. §1692f et seq.**

17 42. Plaintiff repeats, reiterates and incorporates the allegations contained  
18 in paragraphs above herein with the same force and effect as if the same were  
19 set forth at length herein.

20 43. Defendant's debt collection efforts attempted and/or directed towards  
21 the Plaintiff violated various provisions of the FDCPA, including but not  
22 limited to 15 U.S.C. § 1692f.  
23

24 44. Pursuant to 15 USC §1692f, a debt collector "may not use unfair or  
25 unconscionable means to collect or attempt to collect any debt."  
26  
27  
28

1           45. The Defendants violated 15 U.S.C. §1692f, by unfairly omitting the  
2 possibility of a balance increase, when they had intention of charging the  
3 increased interest and fees.  
4

5           46. By reason thereof, Defendant is liable to Plaintiff for judgment that  
6 Defendant's conduct violated Section 1692f et seq. of the FDCPA, actual  
7 damages, statutory damages, costs and attorneys' fees.  
8

9  
10                                   **DEMAND FOR TRIAL BY JURY**  
11

12           47. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff  
13 hereby requests a trial by jury on all issues so triable.  
14

15  
16                                   **PRAYER FOR RELIEF**  
17

18           **WHEREFORE**, Plaintiff Gerry Malolot, individually and on behalf of all others  
19 similarly situated, demands judgment from Defendant Cypress as follows:  
20

21           a) Declaring that this action is properly maintainable as a Class Action  
22 and certifying Plaintiff as Class representative, and Jonathan Stieglitz, Esq. as  
23 Class Counsel;  
24

25           b) Awarding Plaintiff and the Class statutory damages;  
26

27           c) Awarding Plaintiff and the Class actual damages;  
28

1           d)     Awarding Plaintiff costs of this Action, including reasonable  
2 attorneys' fees and expenses;

3  
4           e)     Awarding pre-judgment interest and post-judgment interest; and

5           f)     Awarding Plaintiff and the Class such other and further relief as this  
6 Court may deem just and proper.  
7

8 Dated: August 21, 2019

9  
10 THE LAW OFFICES OF  
JONATHAN A. STIEGLITZ

11 By:           /s/ Jonathan A Stieglitz            
12 Jonathan A Stieglitz  
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